

TRI Lead Rule Q&A's

Question: *To this date, EPA's TRI web site contains information referring to the 25,000 pound and 10,000 pound thresholds for lead reporting, including several references in the Revised 1998 Q & A document.*

Answer: EPA's TRI web site also contains a lot of information pertaining to the new 100 pound reporting threshold for lead and lead compounds. In fact, a specific portion of the TRI web site is devoted to the lead rule, and provides much detail on the new reporting requirements. The specific web site is <http://www.epa.gov/tri/lawsandregs/lead> . The revised guidance document for complying with the new reporting requirements for lead is also available from the TRI web site, and is prominently displayed.

Question: *The Lead TRI rule does not allow exclusion of de-minimis concentrations; range reporting; or rounding. How is it possible to obtain this level of precision with existing data sources?*

Answer: The determination to not allow the de minimis exemption for chemicals classified as PBT chemicals was made in the PBT chemicals rulemaking (64 FR 58666). The lead rule determined that lead and its compounds are PBTs. The lead rule does not allow for:

- an exclusion based on de minimis concentrations,
- use of range reporting; or
- use of the alternative reporting threshold for the Form A.

The TRI lead rule increased the data reporting precision to one-tenth (0.1) of a pound for lead. When reporting releases and other waste management activities of lead and lead compounds, facilities should round-off to the nearest one-tenth of a pound of lead. The increased reporting precision, elimination of the de minimis exemption and range reporting options do not apply to lead when it is contained in stainless steel, brass or bronze alloys.

In determining whether thresholds for manufacturing, processing, or otherwise using a chemical listed on the EPCRA section 313 list of toxic chemicals has been exceeded and, hence, whether reporting of releases and other waste management quantities is required, EPCRA is very clear that EPA should not require facilities to conduct any monitoring or testing, but that facilities should use readily available information, such as monitoring data collected pursuant to other laws, or make a reasonable estimate of their release information. Therefore, the quality of the release and other waste management quantities submitted by a facility pursuant to EPCRA section 313 is dependent upon the quality of the data used to determine whether an activity threshold for reporting has been exceeded and, if so, the quality of the data used to make reasonable estimates of releases and other waste management quantities.

EPA recommends that facilities complete threshold determinations and release and other waste

management quantity calculations using best readily available information applicable to their operations. In the absence of such information, EPCRA section 313 permits a reporting facility to make a reasonable estimate. EPA also recommends that facilities maintain documentation of the basis for making these estimates (see 40 CFR § 372.10).

Question: *Will EPA enforce against facilities that followed EPA estimating procedures but are later found to have been inadequately precise?*

Answer: Guidance and recommendations provided by EPA for making threshold determinations, or calculating release or other waste management quantities is intended to assist industry with complying with EPCRA section 313 reporting requirements for lead and lead compounds. EPA guidance and recommendations do not supersede, however, any statutory or regulatory requirements, are subject to change, and are not independently binding on either EPA or covered facilities. Additionally, if a conflict exists between EPA guidance or recommendations and the statutory or regulatory requirements, the conflict must be resolved in favor of the statute or regulation. Although EPA encourages industry to consider the Agency's guidance and recommendations, industry should be aware that the Agency's guidance and recommendations usually pertain to address common circumstances at typical facilities. The circumstances at a specific facility may significantly differ from those contemplated in EPA's guidance or recommendations. Thus, individual facilities may find that recommendations and guidance provided by EPA are inapplicable to their processes or circumstances, and that alternative approaches or information are more accurate and/or more appropriate for meeting the statutory and regulatory requirements of EPCRA section 313. To that end, industry should use readily available facility-specific information and process knowledge, where available, to meet the requirements of EPCRA section 313. EPCRA section 313 also provides that, in the absence of such readily available data, a reporting facility may make reasonable estimates to meet those EPCRA section 313 requirements.

Question: *If a facility knows that lead is present but doesn't have idea of concentration, and their supplier is unable to provide specific information for each lead-containing product how should they calculate, to the level precision required by this rule?*

Answer: EPCRA 313 (g)(2) requires facilities to use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data is not readily available, reasonable estimate should be used of the amounts of the chemical involved. It is recommended that facilities document their efforts to comply with this provision of the law.

Question: *EPA's guidance document [provides conflicting information on necessary data precision. The document] states, "When estimating release and other waste management quantities of a listed chemical for purposes of reporting, facilities should base these determinations at a level of precision supported by available data and the estimation techniques used in determinations. The facility is required to make a reasonable estimate when it lacks readily available data." Yet, in the same paragraph, EPA goes on to state, "When expressing release and other waste management quantities of lead or lead compounds on a Form R, the*

level of precision one should use is one-tenth (0.1) of a pound." Which of these statements should be used to determine the appropriate level of precision?

Answer: This quoted text in this question was taken from the first paragraph of section 1.4.4, Data Precision (page 1-11). It does not provide conflicting information on data precision. As stated in the document, the appropriate level of precision for reporting releases and other waste management quantities of lead or lead compounds is one-tenth (0.1) of a pound, except for lead contained in stainless steel, brass or bronze alloys.

Facilities should report releases and other waste management quantities to the level of accuracy that is supported by the underlying data on which the estimate is based. However, EPA stated it would not require greater 0.1 pound (except dioxins) level of precision, presuming that the data supports such a calculation. The Agency believes that, particularly for PBT chemicals, facilities should be able to calculate their estimates of releases and other waste management quantities to one-tenth of a pound and believes that such guidance is consistent with the reporting requirements of sections 313(g) and (h) of EPCRA, which requires facilities to use readily available information or make reasonable estimates as required by EPCRA section 313 (g)(2).

Question: *In many products, different grades, items, colors, etc. contain varying levels of lead. For example: different grades of wire contain different amounts of lead; each of thousands of different electronic components contain differing lead levels; each color of decorative ceramic paint has a different lead content, etc. Often suppliers are unable to provide lead content for each variation of product. Given that rounding and range reporting are not permitted, how should facilities proceed? Also, how are facilities to identify and report de-minimis lead levels when EPA has upheld the applicability of de-minimis to the supplier notification requirements?*

Answer: EPA recommends that facilities complete threshold determinations and release and other waste management quantity calculations using best readily available information applicable to their operations. In the absence of such information, EPCRA section 313 permits a reporting facility to make a reasonable estimate. EPA also recommends that facilities maintain documentation of the basis for making these estimates (see 40 CFR § 372.10).

Facilities may consult several types of sources for facilities for estimating the amount of a chemical in their raw materials and products. These include EPA guidance documents, trade associations, consultants, suppliers, monitoring data, technical references such as catalogues published by chemical companies, Kirk Othmer's Encyclopedia of Chemical Technology and others. The facility must determine what is the best information available to allow them to make a reasonable estimate of the quantities of chemicals that are processed, manufactured, or otherwise used. The information that is used for threshold calculations, which determine if they need to report, can be used to help make estimations of their reportable quantities. The use of range reporting and rounding relate to how the facility reports the estimates it has generated, not how the facility calculates its release and other waste management quantities. The lead rule does not preclude facilities from making reasonable estimates of the amounts involved, if facilities lack more precise information. EPA has previously provided guidance

on how to report when the facility only knows that a listed chemical is present in a range of concentrations in a mixture, or in similar circumstances: see EPCRA Section 313 Questions and Answers, Revised 1998 Version, pages 31-32 (US EPA document number 745-B-98-004, December 1998).

Question: *In Appendix B of the guidance document, EPA states, "If the processing or otherwise use of all like manufactured items results in the release of 0.5 pounds or less of a toxic chemical, EPA will allow this quantity to be rounded to zero and the steel plates may be exempt as articles." This is in direct conflict from EPA's previous statement in Section 1.4.4, " When expressing, on a Form R, release and other waste management quantities for most listed chemicals EPA allows facilities to "round-off" release and other waste management estimates to zero if the estimates are 0.5 pounds or less., This option is not allowed, however, for PBT chemicals, including lead and the lead compound category." Is rounding allowed for lead and lead compounds?*

Answer. The two quotations are discussing two different things. The quoted statement "If the processing or otherwise use of all like manufactured items results in the release of 0.5 pounds or less of a toxic chemical, EPA will allow this quantity to be rounded to zero and the steel plates may be exempt as articles." from Appendix B of the lead guidance document is taken specifically from the answer to question 371, page B-12 of the document. This question and answer pertains to releases of listed chemicals, including lead, from articles. That is, if the release of lead is 0.5 pounds or less annually from processing or otherwise use of all like manufactured items (e.g., articles), this quantity can be rounded to zero for purposes of release reporting. The rounding to zero is only permissible, however, in situations in which the release of lead (or any other listed chemical) does not exceed 0.5 pounds annually from processing or otherwise use of all like manufactured items.

The quoted statement from question 371 (page B-12) does not conflict with the quoted statement from Section 1.4.4 of the document: " When expressing, on a Form R, release and other waste management quantities for most listed chemicals EPA allows facilities to "round-off" release and other waste management estimates to zero if the estimates are 0.5 pounds or less, This option is **not** allowed, however, for PBT chemicals, including lead and the lead compound category." The rest of the paragraph in section 1.4.4 reads: "When expressing release and other waste management quantities of lead or lead compounds on a Form R, the level of precision one should use is one-tenth (0.1) of a pound. Thus, when reporting releases and other waste management quantities of lead and compounds, facilities should round-off to the nearest 0.1 pound." The statements in Section 1.4.4 do not pertain to releases of lead from all like-manufactured items.

Question: *If a facility doesn't have readily available information showing lead is present and they do not report and then there is an enforcement action against them, what type of data/information/backup would EPA require in order for the facility to prove that the information was not available?*

Answer: In any enforcement action brought against a facility by EPA, it is the US government that

bears the burden of demonstrating that the facility has violated EPCRA section 313. In addition to the record keeping requirements under 40 CFR §372.10, EPA recommends that facilities document their efforts to demonstrate compliance with EPCRA section 313 (g)(2).

Question: *Would there be any type of enforcement against a company that doesn't report because there is no reason to suspect there is lead in the product and it is later found that there is lead in the product?*

Answer: EPCRA 313 (g)(2) requires facilities to use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data is not readily available, to make reasonable estimate of the amounts of the chemical involved. EPA recommends that facilities document their efforts to demonstrate compliance with EPCRA section 313 (g)(2). EPA does not believe that it would be likely to bring an enforcement case where a facility truly lacked any reason to suspect that lead was present in a product, and could not reasonably have obtained the information.

Question: *The emission factors provided by EPA in the index provide only a very limited subset of air emissions. What sources should facilities use to obtain emission factors solid waste? For water emissions?*

Answer: EPA guidance cannot substitute for all of the information and expertise available at the facility. It has been EPA's experience that facilities are often better able to make estimates of quantities involved, given that they know more about the specifics of their operation than the Agency. Facilities may wish to consider using the AP-42 handbook of emission factors, or other literature sources, such as government reports, trade journals, the open literature, or standard texts such as Kirk Othmer's Encyclopedia of Chemical Technology. Many of these and other literature sources can be accessed and searched from the Internet.

Question: *How should a facility, without testing, determine if the article status is voided through the release of greater than 0.5 pounds of lead from the cutting of items that contain trace lead, such as sheet metal, optical glass, PVC pipe, and copper pipe?*

Answer. As discussed in responses above, EPCRA is very clear that EPA should not require facilities to conduct any monitoring or testing, but that facilities should use readily available information, such as monitoring data collected pursuant to other laws, or make a reasonable estimate of their release information. EPA also recommends that facilities maintain documentation of the basis for making these estimates (see 40 CFR § 372.10).

To determine without testing whether the release of lead from cutting of all like manufactured items (e.g., articles) is greater than 0.5 pounds annually, EPA recommends that one consider the conditions of the cutting. This includes, for example the annual quantities of the items being cut and

temperature generated as a result of the cutting. Facilities may also want to consider available studies or reports that investigated releases of lead from cutting of items that contain lead. These studies may include studies published in government reports, trade journals, the open literature, or described in standard texts. Monitoring data (e.g., data collected or mandated by OSHA or NIOSH requirements) that pertain to these scenarios may also be available.